IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 19TH JANUARY 2007 / 29TH PAUSHA 1928

WP(C).No. 34139 of 2005(L)

AGAINST THE ORDER DATED / / IN IA.428/00IA.2010/03 IN OS.11/1981 of IST ADDL.DISTRICT COURT, ERNAKULAM .

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PETITIONERS:

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1. **P.P.MATHEW, ADVOCATE, PATHAPARAMBIL, OPPO. BHARATHA MATHA COLLEGE, KAKKANAD.**

2. **T.A.GEORGE, THATTAMPARAYIL HOUSE, OLIYAPURAM P.O. KOOTHATTUKULAM.**

3. **C.SKARIA, UTHIKKATTU HOUSE, OLIYAPURAM P.O. KOOTHATTUKULAM.**

BY ADV. SRI.K.G.PAVITHRAN
SRI.K.J.ANTONY (KANIAMPARAMPIL)

RESPONDENTS:

K.A.MATHAI, S/O.AVIRACHAN, KOCHIVIRIPIT, KIZHUKOMBU P.O. KOOTHATTUKULAM.

BY ADV. SRI.SHAHUL HAMEED MOOPPAN
SRI.K.M.VARGHESE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.34139/2005

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE COMMON ORDER DT.6.12.03 IN I.A. 428/2000 & IA. 2010/2003 IN OS. 11/81 ON THE FILE OF DISTRICT COURT, ERNAKULAM.

EXT.P2:- COPY OF THE REPORT NO.3 SUBMITTED BY THE MANAGING COMMITTEE DT.26.2.2005.

EXT.P3:- COPY OF THE OBJECTION TO REPORT NO.3 FILED BY THE CHAIRMAN, BOARD OF RECEIVERS DT.4.3.05.

EXT.P4:- COPY OF THE REPORT SUBMITTED BY THE CHARTERED ACCOUNTANT DT.5.11.05.

EXT.P5:- COPY OF THE OBJECTION TO THE AUDITORS REPORT DT.5.11.05 SUBMITTED BY THE CHAIRMAN , BOARD OF RECEIVERS AND MEMBERS OF THE BOARD, DT.26.11.05.

EXT.P6:- COPY OF THE OBJECTION FILED BY THE DEFENDANT NO.22 AUDITORS REPORTS DT.28.11.05.

EXT.P7:- COPY OF THE REPORT NO.70/05 FILED BY CHAIRMAN , BOARD OF RECEIVERS DT.1.12.05.

RESPONDENTS EXHIBITS

EXT.R1(a):- COPY OF THE REPORT DT.17.12.04.

EXT.R1(b):- COPY OF THE REPORT DT.3.7.03.

EXT.R1(c):- COPY OF THE STATEMENT FILED BY AUDITER DT.18.1.05.

EXT.R1(d):- COPY OF THE STATEMENT DT. NIL MARCH, 05 BY AUDITER.

EXT.R1(e):- COPY OF THE AFFIDAVIT DT.21.9.05.

EXT.R1(f):- COPY OF THE AFFIDAVIT DT.20.9.05.

EXT.PR1(g):- COPY OF THE IA. APPLICATION DT.11.1.06.

EXT.R1(h):- COPY OF THE APPLICATION DT.23.1.06.

/TRUE COPY/

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M.SASIDHARAN NAMBIAR,J.

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W.P.(C) NO.34139 OF 2005

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Dated this the 19th day of January 2007

JUDGMENT

Petitioners are members of the Receiver Board appointed by this court in CMA No.280/83. The CMA was filed challenging the order in I.A.659/83 in O.S.11/81 on the file of Additional District Court, Ernakulam. Suit was originally filed before Munsiff Court, Ernakulam and was transferred to I Additional District Court and renumbered as O.S.11/81. When the CMA was pending, this court appointed the Board of Receivers. As per Ext.P1 order dated 6.12.03 the Additional District Judge appointed K.N. Valsan, the Chartered Accountant to audit the accounts of St.John's Orthodox Syrian Church which was in the custody of the court through the Board of Receivers appointed by this Court in CMA 280/83. In Ext.P1 order the learned District Judge made it clear that if the Chartered Accountant requires he can approach the court for

getting statement of accounts and report submitted by the Board of Receivers for the past years. The Chartered Account was directed to audit the accounts from 29.9.79 onwards. When the Chartered Account sought the records and other documents for audit purpose, it was not made available. While so, election of the Managing committee conducted as directed by the court. The elected Secretary of the Managing Committee filed Ext.P2 report before the court stating that the documents were not entrusted to them and the Chartered Accountant and P.P. Mathew, Chairman Receiver Board and K.V. John paid Account are persons entrusted with the responsibility and they are playing fraud upon the court and wilfully for not producing the records in court and their intention to help the real black sheeps to escape from the liability. A direction was sought from the court to direct P.P. Mathew , Paid Account K.V. John and Chartered Accountant K.N.Valsalan to be presented in court to verify on the custody of the documents of accounts of

St.Johns Orthodox Syrian Church from 1979 to 2004. Ext.P3 objection was filed to the said report by the first petitioner. Case of the petitioner is that learned District Judge did not pass any order in Ext.P2 report considering Ext.P3 objection filed by first petitioner. An objection was filed to Ext.P2 report by the auditor that account books handedover to him are the Day Books for the year 1994 to 2003 and the Church had no practice of keeping ledger and the auditor has to prepare ledger first and from the ledger, receipts and payment account, income and expenditure account and finally the balance sheet is to be prepared for the years 1994-95 to 1998-99 the auditor has reported that the vouchers, receipts, bank passbooks, ledgers etc. are not made available and therefore the auditing for those years could not be started. The Chartered Account had filed a report after accepting the audit for the period from 1999-2000, 2000-2001, 2002-2003 pointing out serious irregularities. Learned District Judge initiated

an enquiry on the irregularities. The auditor was examined in part. It was at that time first petitioner filed Ext.P7 report requesting the court to invoke the provisions of Rule 4(2) of Order XL of the Code of Civil Procedure and refer the parties to a separate suit. Learned Additional District Judge finding that the matter requires detailed consideration in view of the examination of the auditor in the enquiry being conducted did not pass an order in Ext.P7 report. Learned District Judge passed an order on 5.12.05 directing the Chairman, Board of Receivers to produce all the books of accounts supporting vouchers before this court within ten days failing which separate prosecution proceedings will be initiated.

2. This order is challenged in this petition filed under Article 227 of Constitution of India.

3. Case of petitioners is that order was passed without considering Ext.P3 objection filed by the petitioners to Ext.P2 report and therefore the order directing first petitioner to produce the

records is illegal and is to be quashed.

4. Learned counsel appearing for petitioners and contesting respondent were heard.

5. The Board of Directors were appointed by this court. The first petitioner is the Chairman of the Board of Receivers and the Board of Receivers consists of five receivers including the Chairman. When it was brought to the notice of the court that the auditor could not audit the accounts for the non-availability of the records relating to the period from 1979 onwards, learned District Judge issued a direction to the Chairman Board of Receivers to produce the documents. Though learned counsel for petitioners vehemently argued that the order is illegal contending that the order was passed after the Board of Receivers ceased to function for more than one year and without passing any order in Ext.P2 or P10 report on the facts I do not find that that is a reason justifying the action of the petitioners in approaching this court. Being the officers appointed by the court

first petitioner and that too first petitioner being the Chairman of Board of Receiver have a duty to explain to the court either to produce the documents or to explain why they could not produce when the court directed them to produce the records. If the case of the petitioners is that without an order in Ext.P2 report or without hearing the objection raised in Ext.P3 first petitioner could have approached the learned District Judge himself and explain the reasons. Petitioners are not entitled to rush to this court to invoke Article 227 of the Constitution of India. I do not find any infirmity in the order passed by the learned District Judge directing the Chairman Board of Receiver to produce the relevant documents. Petitioners are at liberty to file an explanation before learned District Judge if they are not in a position to produce the books of accounts as directed. If petitioners are not producing the documents and not submitting explanation, learned District Judge is entitled to

proceed as directed in the order. If first petitioner submits any explanation, learned District Judge has to consider the same and pass appropriate order in accordance with law. Learned District Judge has to complete the enquiry initiated by him and pass appropriate order in the enquiry as well as in Ext.P7. If the 22nd defendant had filed an application as represented learned District Judge has to pass appropriate order in that application also.

Writ Petition is disposed as above.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006